

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF BALRAJ CHHOKER,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Joshua Hawkes Q.C., Chair

Glen Buick, Committee Member

Edith Kloberdanz, Committee Member

Appearances:

Counsel for the Law Society – Shanna Hunka

Counsel for Balraj Chhoker – Dale Ellert

Hearing Dates:

December 15, 16, 2016 and

February 6, 2017

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On December 15, 2016, a Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding a number of citations against Balraj Chhoker. Dale Ellert, counsel for Mr. Chhoker and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There being no objections, the hearing proceeded.

2. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the Law Society of Alberta.
3. The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the *Rules of the Law Society of Alberta* (“Rules”) pursuant to which the Deputy Executive Director and Director, Regulation of the LSA, determined that there were no persons to be served with a private hearing application, was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the hearing be held in public.
4. At the outset of the hearing an Exhibit Book was entered by consent. It contained all of the documents and account reconstructions relevant to the circumstances and citations described below. These exhibits were provided to the Committee in advance of the hearing.

Citations

5. Mr. Chhoker faced 6 citations:
 - a. Citation 1: It is alleged that you signed a cheque to disburse trust funds in contravention of the Rules and that such conduct is deserving of sanction.
 - b. Citation 2: It is alleged that you failed to conscientiously serve your client or clients and that such conduct is deserving of sanction.
 - c. Citation 3: It is alleged that you failed to report unethical conduct of another lawyer to the Law Society and that such conduct is deserving of sanction.
 - d. Citation 4: It is alleged that you failed to be candid with the Law Society and that such conduct is deserving of sanction.
 - e. Citation 5: It is alleged that you were misleading when questioned under oath and that such conduct is deserving of sanction.
 - f. Citation 6: It is alleged that you assisted R.V. in an improper purpose and that such conduct is deserving of sanction.

Statement of Admitted Facts

6. Mr. Chhoker filed a 54 paragraph Statement of Admitted Facts in which he acknowledged many facts surrounding the impugned transactions, described in greater detail below. He admitted Citations 3, 4, and 5.

Background and Context

7. Mr. Chhoker was called to the Bar on December 1, 2005. He joined the firm where all of the impugned transactions took place in 2008, and claimed that this is where he learned to practice real estate law. That firm had a very high volume real estate practice.

8. It was not disputed that there were extensive irregularities in the firm trust account. In fact, the forensic accountant for the Law Society testified that the problems were so numerous that the scale of the investigation had to be confined to an examination of 15 transactions. That examination revealed the existence of a “lapping scheme”, where funds were moved between client files in an attempt to cover shortfalls from apparently fraudulent or other improper payments. The scheme could only succeed as long as there was enough money coming in on new transactions to cover the increasing shortfall caused by the impugned payments.
9. The flow of funds required to sustain the scheme failed. The Law Society commenced an investigation of the firm after a client, T, commenced a lawsuit against the firm. That Statement of Claim was filed on October 5, 2012. It named Mr. Chhoker, the partners of the firm, the realtor RV, and many others as defendants.
10. It was not disputed that RV appeared to be a central figure in the operation of the “lapping scheme”. He found the clients, frequently completed all of the paperwork relating to the transactions with the clients, delivered legal documents to the clients for signature, often at their homes or other places away from the firm, and delivered the bank drafts and other deposits for these transactions to the firm. RV was a frequent visitor to the firm, and often advised the legal assistants as to which transaction the bank drafts should be deposited. In that way, he performed several functions essential to the ongoing scheme, isolating clients from the lawyers at the firm and directing the flow of funds from those transactions in a manner essential to the functioning of the scheme. Many of the payments scrutinized in the scheme were directed to members of his family or others to whom he had connections.
11. R.V. committed suicide in October 2011 when the scheme began to fail.
12. It should be noted that these background facts were presented by the investigator and forensic accountant, KV. This evidence was supplemented by the admissions of Mr. Chokker and the submissions of counsel as a necessary context in which to understand and evaluate the actions of Mr. Chokker.

The Admitted Citations

13. Mr. Chhoker admitted Citations 3, 4, and 5 in the Notice to Attend. The essential facts admitted in relation to these citations arose in three real estate transactions.
 - a. **Failure to Report Unethical Conduct**
14. T purchased a residential property on April 21, 2010. T provided four bank drafts and had other resources to finance the purchase. No mortgage was needed. This transaction was handled by other lawyers in the same firm as Mr. Chhoker.
15. Subsequent forensic examination of the firm trust account revealed that those drafts and related funds were diverted as part of the “lapping scheme”. A private mortgage was also put in place on this transaction in furtherance of that scheme. T’s signature was forged on

the documents necessary to create that mortgage. Mr. Chhoker testified that he was unaware of this scheme and of these aspects of this purchase, until they were discovered and disclosed to him through the investigation by the Law Society.

16. In his Statement of Admissions, Mr. Chhoker acknowledged that he was assigned to represent T on the subsequent sale of that property in March 2011. Due to the actions described above, the sale did not provide the expected proceeds to T. When she discovered that, she brought the action described above. The Statement of Claim was filed on October 27, 2011, and subsequently served on the parties. Shortly thereafter, Mr. Chhoker and other members of the firm retrieved the file to review it and formulate a response to the suit.
17. Mr. Chhoker admitted that he was asked by another member of the firm to alter documents in the file, including the retainer letter, and the direction to pay. He refused to alter the documents. However, he continued to work at the firm. He did not report this request to the Law Society as required by what is now Rule 7.13 of the *Code of Conduct*. The request to alter these documents was unethical and apparently unlawful conduct. The failure to report that conduct was a serious breach of Mr. Chhoker's responsibility.
18. The seriousness of that breach was amplified once Mr. Chhoker learned that the documents had been altered. He learned that when he saw the altered documents in relation to the questioning related to the ongoing suit brought by T. His duty to report was a continuing obligation, and his failure to do so was a continuing breach of that obligation.
19. In making these findings we rely on and accept Mr. Chhoker's evidence in relation to these events, and on paragraphs 31-44 of his Statement of Admissions. Where necessary we reject the evidence of an assistant with the firm, Ms. S., where it contradicts those admissions against interest, the evidence of Mr. Chhoker and the documentary evidence.

b. Misleading Answers Under Oath

20. The documents referred to in paragraph 15 were of critical significance in the litigation. Mr. Chhoker and other members of the firm were questioned under oath in relation to the transactions involving T on October 16, 2012. Mr. Chhoker was questioned about the sale in March 2011. He expressly relied on the altered retainer letter as authority for taking direction from the realtor, RV, in relation to that sale.¹ That reliance was wrong, and his answers in relation to, and in reliance on this and other altered documents, were false and misleading.

c. Failure to be Candid with the Law Society

21. The lawsuit by T prompted an investigation by the Law Society. That investigation was complex and lengthy. Mr. Chhoker was interviewed by the Law Society on February 3, 2014. He admitted that he was not candid with the Law Society in that interview by

¹ Transcript of Questioning, Ex. 7, 3.08, 30:1-10, 33:1-36:26

confirming that his testimony from the questioning was accurate and “safe to rely on”. He also answered detailed questions regarding the impugned documents as though they were genuine.² He knew that they were not.³ He was specifically asked if he had knowledge of any wrongdoing at the firm in relation to these and related transactions. Apart from poor paperwork, he denied knowledge of any wrongdoing.⁴ These answers were false and misleading.

22. He did not tell the truth to the Law Society about these matters until a subsequent interview in December 2014. The uncontradicted evidence of the Law Society investigator and forensic accountant KV was that significant complexity and expense was added to the investigation as a result of this false information. Had the Law Society known that these documents were not genuine, the investigation could have been simplified and shortened.

The Contested Citations

23. Mr. Chhoker contested Citations 1, 2, and 6, either on the basis that he did not do the acts alleged, or that he did not do them with the requisite intent or knowledge. The specific positions of Mr. Chhoker and the Law Society are described in relation to each of the contested citations.

a. Disbursing Trust Funds in Contravention of the Rules

The Evidence

24. This citation relates to two trust cheques signed by Mr. Chhoker. The first of these arose from a real estate purchase file. Mr. Chhoker was the lawyer for the purchaser, B, and for the bank T, that was providing the mortgage for the transaction that closed on April 30, 2010.
25. It was a simple residential purchase. It was B’s first real estate purchase in Canada. He was a recent immigrant and English was not his first language. However, Mr. Chhoker also spoke Punjabi, and had the ability to communicate clearly with B.
26. The evidence established that the transaction proceeded smoothly. B provided the expected cash deposit, and the bank, T, provided the expected mortgage funds. B received clear title to the property and T received the expected registration of the mortgage on that title.
27. However, several cheques were paid out of the firm trust account pursuant to a Direction to Pay in relation to this purchase. Mr. Chhoker admitted during his evidence at the hearing that the Direction “made no sense” in the context of this simple transaction.

² Ex. 8-208, pp.6-7, 40-41, 57, 66-7

³ Statement of Admissions, para 46

⁴ Ex. 8-208, p.118

Rather than the expected payments on a simple residential real estate purchase, the Direction purportedly authorized payments to 5 parties with no apparent connection to the transaction. Mr. Chhoker signed one of these cheques on May 5, 2010, in the amount of \$14,385.50 to PH Ltd.. In his Statement of Admissions he acknowledged that PH Ltd. was owned by an associate of the realtor, R.V.

28. In his evidence before the Committee, Mr. Chhoker testified that he had “no explanation” or recollection of this payment other than his reliance on the Direction to Pay. He stated that he was “not careful” in signing this cheque and that he should have “paid more attention.”
29. Unknown to Mr. Chhoker, these 5 payments were instrumental in furthering the "lapping scheme" by diverting excess payments placed into the B transaction as part of that scheme.
30. The second cheque signed by Mr. Chhoker was to JC on July 29, 2010. The payment was made from a residential real estate sale. Mr. Chhoker was not the lawyer on this file, but he was asked to sign the cheque and did so on the strength of the Direction to Pay, without making any other enquiries. He had no independent recollection of the transaction.⁵
31. JC was not apparently involved in the transaction as either vendor, or purchaser. Mr. Chhoker erroneously assumed that the matter-to-matter transfer in the Direction was to transfer the equity from this sale to a related purchase file. It was not. The effect of that portion of the Direction to Pay was to transfer funds to a completely unrelated file as part of the "lapping" scheme".⁶ An examination of the file numbers would have revealed this misdirection. Further, an examination of the file would have confirmed that JC was not involved in this transaction.

The Applicable Rules

32. The Law Society indicated it would rely on the reverse onus contained in s. 67 of the *Legal Profession Act*. The effect of that provision places the burden of proof on Mr. Chhoker to establish that these funds were properly dealt with.
33. Rules 122.1 and 124 (as they were at the time of these transactions) prohibit the payment of trust funds where no legal services are required. Further, Rule 124 requires that a lawyer be satisfied of several key factors prior to disbursing trust funds, including:
 - a. That the money is available in the trust account,
 - b. That the money is properly payable to a client, (which presumes both a knowledge of who the client is, and the source or nature of the funds and transaction in question)

⁵ February 15, 26:8-28:3, 79:15-81:23

⁶ February 15, 80:9-82:14

c. or is properly being transferred to another account.

34. The Rules do not mandate a standard of perfection. In fact, they expressly acknowledge the possibility of inadvertence or error with respect to some aspects of trust transactions.⁷

Findings

35. Mr. Chhoker acknowledges that in both of these instances the payments he authorized were not in compliance with these Rules. However, he contends that these errors were the product of simple inadvertence or mistake in the context of a busy conveyancing practice.
36. We conclude that in the circumstances of both cheques, more was required of Mr. Chhoker. In the first instance, simple reliance on a Direction to Pay that he acknowledged “made no sense”, agreed that it was “bad on its face” and should have “raised red flags”, is insufficient. On his own evidence he indicated that he had “no explanation” as to why he signed this cheque in these circumstances. At best, his conduct in this case approaches willful blindness or recklessness – that is, the conduct of one who sees (or ought to see) the risk, and takes the chance in the face of that risk. A much higher standard is required of members of the profession in the exercise of their fiduciary responsibilities in relation to trust funds.
37. Two aspects of the second cheque required more than simple reliance on the Direction to Pay. First, Mr. Chhoker was not the lawyer on the file. He had no recollection of the circumstances that gave rise to his involvement with this transaction and relied on the Direction. When disbursing trust funds on another lawyer’s file, further enquiries may be required in order to satisfy the explicit and implicit requirements of the rules described above. Second, the disbursement authorized by Chhoker was to a party apparently unrelated to the transaction. Where a cheque is payable to an outsider, extra enquiries are required to ensure that the payment is justified according to the rules described above.
38. A significant number of questions were directed at the hearing as to whether further enquiries by Mr. Chhoker would have uncovered the “lapping scheme”, or simply led to the need for more enquiries. Whether such questions would have exposed the scheme is not determinative, or perhaps even relevant to this citation. Rather, the issue is whether Mr. Chhoker took reasonable steps to assure himself that the payments he authorized were proper and in compliance with the rules. In the first instance, he took no steps beyond reliance on a Direction to Pay that he acknowledged appeared irregular and “bad on its face”. In the second, he took no further steps than to look at the Direction to Pay to an apparent stranger to the transaction on the file of another lawyer.
39. With respect, both the protection of the public and the reputation of the profession, especially as they relate to the sanctity of trust funds, require more. Simply following the

⁷ See for example R. 124(1)(d)

requests of staff or others to sign cheques in circumstances which do or should give rise to the need for further enquiries in the totality of these circumstances constitute a breach of those Rules and is conduct deserving of sanction.

40. As a result, we find that this citation has been proved and Mr. Chhoker is guilty of conduct deserving of sanction.

b. Failing to Serve Clients

41. This citation relates to the actions of Mr. Chhoker in relation to three clients, T, B, and the T bank. Mr. Chhoker acknowledged during his evidence that most of the key documentation in relation to the individual client T appeared to show him as the responsible lawyer. However, he claimed that the fact that other lawyers in the firm also appeared to be involved in creating the mortgage and in making other payments on the file are indications that he was not actually the responsible lawyer on this file. With respect to the clients B and the T bank, he acknowledges that they were his clients, but claims that they were properly served. For the reasons given below we find otherwise. In each case we conclude that Mr. Chhokker failed to serve these clients and that this is conduct deserving of sanction.

Client T

42. Mr. Chhoker gave several statements regarding his relationship to the client T. In his questioning under oath in relation to the action commenced by T, he did not deny or qualify his responsibility for the sale file.⁸ He did indicate that he had not met the client, contrary to his usual practice, and could only speculate as to why this was so.⁹ He testified that he was not responsible for the initial purchase by T despite his name being on the retainer letter.¹⁰ In light of his admitted falsehoods in relation to his reliance on the altered documents in this evidence, described above at paragraphs 15 to 20, we appreciate that the documentary and related evidence must be assessed with caution. Deliberate and protracted falsehoods under oath may undermine the entirety of the evidence of a witness.
43. In his statements to Law Society investigators he acknowledged without qualification or reservation that he was the lawyer responsible for the residential real estate sale involving T. He did indicate that it appeared that another partner in the firm had signed the payouts with respect to this transaction. He also testified that the instructions to add RV to the retainer letter were completed by someone else at the firm.¹¹ The same caution as noted

⁸ Exhibit 7, p.30:7-41:9

⁹ Exhibit 7, p.16

¹⁰ Exhibit 7, p.18:18-19:16

¹¹ Exhibit 8, p.6:20-27, 39:7-41:4, 65:23-67:23

above applies to this evidence. His answers to the Law Society regarding the sale file involving T are intertwined with answers relying on documents he knew to be false.

44. He made formal admissions regarding his relationship with T at paragraphs 24-33 in his Statement of Admissions. Those admissions included that the file was assigned to him, but that he did not meet with the client to sign the Transfer of Land, did not confirm the change in the sale price on the real estate contract with the client or confirm instructions to alter the sale price on the Transfer, or ask her to sign a revised Statement of Adjustments in accordance with firm policy.
45. Taken at its highest, his evidence in relation to his role on this file at the hearing is that he was “probably” not the lawyer responsible for this transaction.¹² The essence of his evidence in regard to this transaction is encapsulated in the following exchange in cross-examination:

Q. ... And so now we hear from you that it's not really your file, even though your name is on the retainer letter, your name is on the trust letter, and your name is on the mortgage payout letter, and the –

A. Well, yes, it just seems from the cheques, when you look at all of the things that have been going on without my involvement in it, I can't be fully involved in that file so, I'm just looking at the facts of the file.

Q. Isn't it the case that it was your file but other people interfered with your file?

A. I can't say that with certainty.¹³

46. As noted, several of the critical documents in relation to this transaction have either the name or name and signature of Mr. Chhoker including the retainer letter, trust letter, mortgage payout letter, and the reporting letter to T.¹⁴
47. After carefully considering all of the evidence, and assessing the evidence of Mr. Chhoker in relation to his involvement with the sale of property involving T, we find that the preponderance of reliable evidence support the conclusion that he was the responsible lawyer on this file. As a result, he had obligations to T as his client.
48. We make that finding on the basis of the documentary evidence, noting that there was never a suggestion that the portions of those documents (the member's name and signature) had been altered or changed in any way. It is the combined effect of these documents, together with his sworn answers to questions, responses to the Law Society, and Statement of Admissions that cumulatively support that claim. Mindful of the concerns regarding the veracity of his evidence and statements to the Law Society, we consider his acknowledgements of responsibility to be admissions against interest in these contexts. Those admissions are supported by the other evidence referred to above.

¹² December 15 Transcript, 6:1-15

¹³ December 15 Transcript

¹⁴ Retainer Letter, Ex. 12, Reporting Letter, Ex. 20, the amended Transfer of Land, Ex. 24, commissioning the Affidavit of Execution, Ex. 24, and the Trust Letter, Ex. 27

49. We find that he failed to serve T as a result of his admissions, including:
- a. That he did not meet with T when she signed critical documents,
 - b. That he did not notice that there was no contract for the initial sale price on the property in question,
 - c. That he did not confirm the change in the sale price of the property with T, and did not have her confirm and re-sign the documents that were altered to reflect that change, including the Transfer of Land and the Statement of Adjustments,
 - d. His reliance on, and false statements in relation to, altered documents in the litigation with T, effectively placed his own interests above those of his client and above his sworn obligations of integrity.

Client B

50. Mr. Chhoker acknowledged that B was his client. He also acknowledged that he never met with B. He relied on the fact that his assistant S prepared the essential documents in relation to this transaction and apparently executed them with B.
51. He also admitted that he failed to make any enquiries regarding the discrepancies created by the "lapping scheme" in relation to this transaction. Had he examined the trust ledger in relation to this transaction he would have noticed several irregularities, including the fact that there was a significant surplus of funds posted to this transaction and that there were payments directed to third parties unrelated to the purchase of this property.
52. The fact that the transaction closed without loss or damage to B has nothing to do with the legal services, advice and protection that should have been provided by Mr. Chhoker. It is a matter of good luck rather than good management that B suffered no loss as a result of the "lapping scheme". He had the good fortune to be placed in the middle of that scheme where funds were still available and flowing freely between ledgers in the trust account. Had his transaction occurred later in the scheme the result might well have been otherwise. His transaction was certainly at risk as a result of the scheme operating at the firm.
53. Mr. Chhoker failed to serve B in two critical ways. First, he never even met B, nor did he provide any advice or explanation regarding the documents signed by B, including the mortgage. He later acknowledged that B was not a sophisticated client in any way, and that he was vulnerable. He was owed more care and attention from Mr. Chhoker than the perfunctory explanations and execution of documents he received from Mr. Chhoker's assistant S, who was functioning with little or no supervision. Regardless of the outcome of the transaction, the Rules require a level of care, caution, and attention that was manifestly absent in this case.
54. Secondly, as noted above, B was exposed to risk as a result of the "lapping scheme". The fact that this risk never materialized in this transaction is no credit to the actions of Mr.

Chhoker. Had he taken even rudimentary steps he would have noted significant irregularities regarding the trust ledger associated with this transaction.

Bank Client T

55. Mr. Chhoker received mortgage instructions from this client bank in relation to this transaction. We find it significant that the bank provided these instructions to Mr. Chhoker rather than to others in the firm that they had specifically refused to deal with. That was an indication that the bank had particular concerns in dealing with Mr. Chhoker's firm.
56. As noted above, Mr. Chhoker did not make even rudimentary enquiries regarding the trust ledger associated with this transaction. He admitted in his evidence that had he done so he would have discovered that the deposit provided by B had been transferred to another transaction, and that the deposit required to satisfy the mortgage requirements was provided from another source. Mr. Chhoker acknowledged that this was contrary to the mortgage instructions he received from T. Further, he admitted that the significant irregularities in the trust ledger associated with this transaction would have been of concern to the bank. That is especially true in light of the elevated level of concern that the bank had in dealing with Mr. Chhoker's firm. He took no steps to address any of those concerns.
57. In doing so he failed to follow the instructions of his bank client T, and exposed the bank to the risks flowing from the "lapping scheme" operating at the firm. While reasonable enquiries by Mr. Chhoker might not have uncovered the full extent of the scheme, they certainly would have disclosed material irregularities at the firm that would have been of interest to T, particularly in light of their heightened concern. His failure to make any of these enquiries and advise his client accordingly represent a significant failure to serve that client. Only pure chance protected this client from suffering loss as a result of the problems at the firm. That fact is merely the absence of a further aggravating factor. It does not excuse or mitigate the failure of Mr. Chhoker to serve this client.
58. Mr. Chhoker is guilty of conduct deserving of sanction in respect of Citation 2.

c. Assisting RV in an Improper Purpose

59. The wording of Citation 6 is significant:

It is alleged that you assisted R.V. in an improper purpose and that such conduct is deserving of sanction.

60. Two different series of acts are alleged in support of this citation – that Mr. Chhoker relied on falsified documents and gave false and misleading evidence in response to questioning as described in paragraphs 15 to 20, and that he signed cheques that had the

effect of furthering the "lapping" scheme as described in paragraphs 27 to 31..

61. The combined effect of the admissions and findings described above establish that Mr. Chhoker committed these acts. Two defences were advanced in relation to this citation. First, Mr. Chhoker contends that the relationship with R.V. is too remote, and that the Code of Conduct speaks only of a prohibition against assisting a client in an improper purpose. R.V. was not a client of Mr. Chhoker or anyone else at the firm. Second, he contends that he lacked the requisite intent to breach this rule in any event as he was unaware of the existence of the scheme perpetrated by R.V., and only learned of it as a result of the investigation by the Law Society.
62. The prohibition against assisting in an improper purpose is found in both versions of the Code of Conduct applicable to this continuing course of conduct. The current Code and Commentary in relation to this obligation state:

Fraud by Client

3.2-13 When acting for a client, a lawyer must not advise or assist a client to commit a fraud, crime or illegal conduct, nor instruct the client on how to violate the law and avoid punishment.

Commentary

[1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

63. The Code of Conduct was amended in November of 2011. The provisions of the former Code of Professional Conduct also prohibited assisting clients in unlawful or improper conduct.
64. To establish that a lawyer has been guilty of assisting in an improper purpose, there need not be a finding of fraud. A hearing committee need not find that the member had an intent to become engaged in an improper purpose, or that the member knew that the circumstances surrounding the transaction were improper or fraudulent. It is sufficient to find that the member's actions demonstrated recklessness or willful blindness in the conduct of the relevant transaction, and that the transaction itself had an improper purpose. Recklessness or willful blindness may be found when a lawyer simply fails to make reasonable enquiries when the circumstances call for further investigation. The Alberta Court of Appeal in *Riccioni v. Law Society of Alberta, infra*, stated that the degree of intent is irrelevant; a lawyer may be found guilty of conduct deserving of sanction if the regulator establishes that the impugned transaction has occurred with the lawyer's assistance or involvement. The Court of Appeal has characterized the allegation that a lawyer has assisted a party in an improper purpose as a strict liability offence. (See *Law Society of Alberta v. MacKinnon*, 2016 ABLs 42 (CanLII), at para. 53; *Law Society of*

Alberta v. Riccioni, 2014 ABLS 3 (CanLII), at paras. 50-52, and *Riccioni v. Law Society of Alberta*, 2015 ABCA 62 (CanLII) at paras 2-3.)

65. It is also not necessary to consider whether RV was a client. The Code of Conduct is not an exhaustive codification of permissible ethical behaviour. While Rule 3.2-13 addresses a lawyer's duty to refrain from assisting a client in the commission of a fraudulent or illegal conduct, the concept is to be applied by analogy to the conduct of lawyers when dealing with non-clients as well. Section 49 of the *Legal Profession Act* allows the LSA to discipline and regulate all of its members in the public interest, when the conduct of any member is deserving of sanction.
66. It has been established that Mr. Chhoker's actions furthered the improper actions and conduct of RV and others, and facilitated the "lapping scheme" and the subsequent efforts to cover up that scheme through the creation of and reliance on falsified documents.
67. Mr. Chhoker was clearly and personally aware of the creation of these documents. He knew they would have the effect of improperly justifying the actions of RV. He relied on these documents in giving false evidence under oath that would have provided a defence for the improper conduct of RV. We find that this admitted conduct knowingly assisted RV (and his estate) in covering up the existence of the "lapping scheme". This citation is established on the basis of this conduct alone.
68. Were it necessary, we would also find that the other conduct of Mr. Chhoker in relation to the transactions described above also support a finding that he assisted RV in an improper purpose. While he may not have been aware of every transaction in which the firm was engaged on behalf of its clients, he is guilty of conduct deserving of sanction in relation to his direct involvement in the transactions in evidence before the Committee, involving individual client T, client B and bank client T. Where trust funds are involved, the rules and the public interest require a higher standard of conduct. In this case, no meaningful inquiries were made about the issuance of trust cheques from clients' sale proceeds, in circumstances which clearly called for them.
69. It has been established that Mr. Chhoker's actions furthered the improper actions and conduct of RV and others, and facilitated the "lapping scheme". While Mr. Chhoker may not have been aware of every transaction in which the firm was engaged on behalf of its clients, he is guilty of conduct deserving of sanction in relation to his direct involvement in the transactions in evidence before the Committee, involving individual client T, client B and bank client T. Where trust funds are involved, the rules and the public interest require a higher standard of conduct. In this case, no meaningful enquiries were made about the issuance of trust cheques from clients' sale proceeds, in circumstances which clearly called for them.
70. Citation 6 has been established and Mr. Chhoker is guilty of conduct deserving of sanction.

Concluding Matters

71. The Committee will reconvene to hear the submissions of counsel with regard to sanction.

Dated at the City of Calgary, in the Province of Alberta, this 26th day of April, 2017 by:

Joshua Hawkes, QC

Glen Buick

Edith Kloberdanz